U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JAN 29 2013 OFFICE: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a physician. At the time she filed the petition, the petitioner was a fellow in gastroenterology and hepatology at The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement in which counsel states that the director did not give sufficient consideration to (1) the petitioner's awards or (2) her gender and combination of skills.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on September 3, 2010. In an introductory statement, counsel stated that the petitioner "possesses expertise as both a Gastroenterologist and as an Obstetrician/Gynecologist [OBGYN]. Less than 1% of all Gastroenterologists are able to treat and manage GI [gastrointestinal] problems encountered in pregnancies." Counsel cited no evidence to support this claim. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Witness letters (from physicians who claim no expertise in the petitioner's specialty) included an "estimate that less than

0.5% of GI specialists have the knowledge and expertise to treat patients suffering from GI problems and pregnancies" (*sic*), but the record contains no solid evidence to establish the accuracy of this admitted "estimate."

Counsel stated: "We have provided documentation that shows that this nation is facing a significant shortage in Gastroenterologists, especially those who are able to treat women." Counsel, here, appears to equate the ability "to treat and manage GI problems encountered in pregnancies" with the ability "to treat women," an equation that disregards digestive problems unrelated to pregnancy.

More important, Congress addressed the issue of physician shortages with the passage of section 203(b)(2)(B)(ii) of the Act, which spells out a procedure by which a physician in a shortage area can qualify for the waiver. The implementing regulations for this procedure appear at 8 C.F.R. § 245.12. The petitioner did not submit the evidence that those regulations require, relying instead on the general assertion of a shortage in her specialty. Outside of the statutorily specified provisions identified above, a shortage of workers is grounds for obtaining, rather than waiving, a labor certification. *See NYSDOT*, 22 I&N Dec. at 218.

Counsel asserted that the benefit arising from the petitioner's work is national in scope because:

> Her role as a GI specialist extends beyond merely attending to a small community of patients in research and clinical settings. The expansive scope of [the petitioner's] salient contributions encompasses not only her immediate field of gastroenterology, but also the medical community at large both nationally and internationally. Her original research has already had a direct impact on the field and has gained her nationwide recognition. Through her many publications and presentations, [the petitioner] is not only reaching a large and distinguished audience, but she is in fact reaching countless leading specialists in the field throughout the country. She is thus having a profound and direct impact on her field.

Counsel stated that the petitioner has published her research in journals and presented it at conferences. Counsel correctly asserted that this dissemination of research work provides benefits that are national in scope. The petitioner, however, will prospectively benefit the United States as a researcher only if she continues to perform research. Research conducted in the context of graduate study or training is, by nature, time-limited and not necessarily indicative of the student's or trainee's future career trajectory.

In terms of the petitioner's clinical practice of medicine, counsel's claims are considerably less persuasive:

> [The petitioner] frequently diagnoses and treats patients from different parts of the country on referral. She has worked at tertiary facilities that are constantly referred patients from various regions throughout the country. Because she is able to perform such advanced procedures that only a very small percentage of his [*sic*] peers are able to perform, she is called on to treat patients from around the country. In addition, she

> is constantly teaching the use of the skills to both junior and even senior peers, as such creating a ripple effect that is making the performance of these procedures more widespread nationally.

The above claims lack evidentiary support, as well as details that would permit verification. As for the claimed "ripple effect" of teaching "advanced procedures," counsel did not claim that the petitioner invented or significantly improved these procedures. An alien's job-related training in a given procedure, whatever its importance, is not an achievement or contribution comparable to the innovation of that new method. *See Matter of New York State Dept. of Transportation*, 22 I&N Dec. 221 n.7. The basic claim appears to be that, having learned advanced procedures herself, the petitioner can now teach them to others. Counsel did not explain how this distinguishes the petitioner from other medical students who, like the petitioner, take on some teaching duties even while completing their own professional training. Also, counsel did not explain why ultimate credit for the "ripple effect" should go to the petitioner rather than to her teachers, or their teachers before them.

Counsel addressed the labor certification issue:

> In the labor certification process, the employer is required to list the "*actual minimum requirements for the job opportunity*." [20 C.F.R. Sec. 656.21 (b)(5)].[1] In effect, this means that the employer must show that it "*has not hired workers with less training or experience for jobs similar to . . . the job opportunity*." Such considerations are irrelevant within the factual considerations of the instant case, and are outweighed by the rare and valuable skills that [the petitioner] brings to the United States. . . .
>
> **Clearly, [the petitioner], who has been hired to serve in leading roles at some of the nation's top medical institutions, was not selected for these positions because she possesses minimal or normal requirements. She was selected after nationwide searches in competition with extremely highly qualified peers because she is regarded as superior as a physician and as a researcher and because she is able to achieve results that are far beyond the norm.**

(Counsel's emphasis.) Counsel did not claim to have been privy to the employee selection process at the institutions where the petitioner has worked in the United States Once again, the unsupported assertions of counsel do not constitute evidence. Therefore, counsel must establish a source for the above claims regarding how the petitioner came to work for her employer(s) in the United States. Certainly, a given employer would tend to select the best-qualified applicant for a given position, but this general axiom does not warrant the conclusion that the petitioner "was selected after nationwide searches in competition with extremely highly qualified peers because she is regarded as superior as a physician and as a researcher and because he is able to achieve results that are far beyond the norm." Furthermore, the petitioner submitted no persuasive

[1] Counsel's citation and brackets.

evidence that the petitioner worked in "leading roles" at rather than in training positions such as fellowships and residencies.

The petitioner submitted a substantial quantity of documentation regarding her work at but did not show that these materials amount to more than the standard work product expected from a physician at those institutions. It is by no means a settled or undisputed fact that the petitioner has had "leading roles" at "top medical institutions," or that those institutions hired her on the basis of her reputation as a superior physician and/or researcher. The positions the petitioner has documented have all been residencies, fellowships or other temporary training assignments, indicating that her employer considered her professional training to be incomplete. Furthermore, there exists no blanket waiver based on the reputation of a given employer. Whatever an institution's standing in a particular field, an alien's employment there is not *prima facie* evidence of eligibility for the waiver. One's impact and influence on the field, rather than where that impact originates, is the chief consideration.

Counsel stated that a job requiring a combination of duties is not amenable to labor certification, because "the Department of Labor stipulates that the employer describe its job opportunity without 'unduly restrictive' requirements [22 C.F.R. sec. 656.21(b)(2)]." The cited regulation actually appears in chapter 20, not 22, of the Code of Federal Regulations. The regulation at 20 C.F.R. § 656.21(b)(2)(ii) contains no flat prohibition relating to a combination of duties. Rather, it reads:

> If the job opportunity involves a combination of duties, for example engineer-pilot, the employer must document that it has normally employed persons for that combination of duties and/or workers customarily perform the combination of duties in the area of intended employment, and or the combination job opportunity is based on a business necessity.

The above regulation clearly allows, under certain conditions, labor certification for a position that "involves a combination of duties." Counsel cited no BALCA decision or other authoritative source to show that the Department of Labor has categorically disallowed labor certification for positions that combine the duties of a physician and those of a researcher. Counsel simply claimed that, because the petitioner "is directly responsible for saving lives," her "skills cannot be measured in the context of business necessity."

Counsel stated that the petitioner is "the recipient of numerous awards," but identified only one such award. The record contains a photograph of an award from inscribed with the petitioner's name and the phrase Residency is a stage of medical training, and therefore this award serves only to distinguish the petitioner from other trainees at one teaching hospital. Such accolades speak well of the petitioner's achievements as a medical student, but also reinforce the point that the petitioner remains a student – albeit one at an advanced stage of training – which, in turn, casts doubt on the claim that the petitioner has already reached the top of her field as counsel has claimed.

The AAO notes that, under the USCIS regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F), "[e]vidence of recognition for achievements and significant contributions to the industry or field by peers,

governmental entities, or professional or business organizations" can form part (but not all) of a successful claim of exceptional ability. Awards would constitute a form of recognition contemplated by the regulation. Because exceptional ability is not automatic grounds for the national interest waiver, awards that only partially support a claim of exceptional ability cannot, by themselves, provide strong support for a waiver claim without persuasive evidence of the awards' significance.

The petitioner submitted several witness letters. Like counsel's introductory statement, these letters offer conclusions that are highly favorable toward the petitioner, while offering little empirical support for those conclusions. stated that the petitioner's "unmatched clinical skills and her additional expertise in obstetrics and gynecology, allow her to treat patients that many gastroenterologists cannot." Citing, as well, the petitioner's "ability to provide the field with influential research," concluded that the petitioner "has achieved an estimable reputation" and that "[o]nly a physician-scientist at the top of her field can boast so many stellar and unique accomplishments."

stated that the petitioner "has worked on a research project that is sure to save America millions in healthcare costs" by showing "that the anti-inflammatory and acid-modulating effects of aspirin can provide protection against clostridium difficile associated diarrhea." and several other witnesses, observed that this project had been accepted for presentation at an October 2010 professional gathering which had not yet occurred as of the petition's September 2010 filing date. Therefore, at the time of filing, it was too early to tell how influential the research project would prove to be. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1).

stated that the petitioner's "prior experience in a surgical specialty . . . gives her an edge over other gastroenterologists," and that she "has further distinguished herself from other physician-scientists by being a master clinician." described a case in which the petitioner's timely diagnosis likely saved a patient's life, and stated that the petitioner contributed footage to "one of the . . . largest archives of educational endoscopic videos in gastroenterology."

While the above witnesses from praised the petitioner's research, they offered no documented example of an existing, demonstrably influential research contribution by the petitioner (as opposed to speculation about the impact of ongoing or unpublished research).

The remaining four letters are from witnesses outside of The letters from and from are virtually identical. Both letters, for example, contain the following passages:

> I would estimate that less than 0.5% of GI specialists have the knowledge and expertise to treat patients suffering from GI problems and pregnancies. . . .

> [The petitioner] has demonstrated extraordinary skill in her clinical work, successfully performing procedures that very few in her area even attempt to undertake. . . .
>
> [The petitioner] has continually been recognized for her wide expertise in medicine through her numerous appointments and leadership positions. She is truly one of the leading GI specialists in the country today.

Neither of the physicians who signed versions of this letter claimed expertise in the petitioner's primary specialty of gastroenterology. is the director of the , whereas

stated: "I can confirm that only about a dozen gastroenterologists that I am aware of . . . have reached a similar level of expertise as" the petitioner. specializes in "Heart failure/Transplant cardiology" at the

is a professor of obstetrics and gynecology, but he said little about the petitioner's achievements in that specialty. Instead, asserted that the petitioner's "rare expertise has garnered her acclaim among GI specialists." is one of several witnesses who stated that the petitioner has held "leadership positions," but who did not identify any of those positions.

All of the outside witnesses work in specialties other than gastroenterology; none of them established their standing to compare the petitioner to other gastroenterologists. Furthermore, the submission of basically the same letter from two supposedly independent witnesses raises serious questions about the actual origin and authorship of all of the letters. The use of common language implies common authorship. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

The petitioner's evidentiary submission included a section labeled "Publications," but it contains only one published piece. The petitioner was one of eight authors of a piece consisting of two photographs and eleven

sentences in The petitioner submitted background materials about that journal but no other, indicating that the article was the petitioner's only published work to date.

On February 21, 2012, the director issued a request for evidence (RFE), instructing the petitioner to submit evidence to meet the guidelines set forth in *NYSDOT*. With respect to the petitioner's various achievements, the director stated that it would not suffice simply to document their existence. Instead, the director called for additional documentation. For instance: "Any awards for work in the field must be accompanied by a statement from the institution that granted the award, commenting on the number of awards given, the frequency of the award, the criteria for granting the award, and the number of individuals eligible to compete for the award."

In response, the petitioner submitted another copy of the previously submitted piece from as well as copies of several conference abstracts that appeared in supplements to The abstracts, like the previously submitted piece, recounted case studies of diagnoses and treatment of individual patients; they did not report original research.

The petitioner submitted several more witness letters. provided a second letter stating that the petitioner's "research work on aspirin and its protective effects on C difficile associated diarrhea (CDAD) . . . has the potential to save the health care system billions of dollars." The letter also indicated that the petitioner's "impressive research work on the effects of obesity on common GI procedures and on bowel prep for colonoscopy, has won two national level awards." The letter did not identify the awards or indicate when the petitioner received them, but did indicate that the petitioner presented the research in 2012, well after the petition's filing date. USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The remaining letters are from witnesses outside of As before, most of the witnesses are not gastroenterologists. signed a letter that contains language very similar, at times identical, to that in second letter. Both letters, for example, contain the following passage: "Her research gives insight on obesity and how it affects the gastroenterologists practice. It also gives an understanding of how to improve quality of colonoscopy in obese patients. This is the kind of research that will help doctors on a daily basis and will directly improve patient care." In both letters, the word "gastroenterologists" is missing the apostrophe required by the possessive sense of the word. letter includes the phrase: "I have applied her impressive original research to my own practice of medicine," but no elaboration on this point. is an oncologist (cancer specialist), specializing "in translational hematology." The letter did not identify any cancer-related research by the petitioner, focusing instead on an infectious disease unrelated to cancer. Therefore, the letter does not explain how the petitioner, as a gastroenterologist, has influenced the medical practice of a cancer specialist. Other witnesses mentioned colorectal cancer, but did not, and did not claim to specialize or work with that particular type of cancer.

[redacted] is also an oncologist, but one with a more discernible relation to the petitioner's work. [redacted] specialty involves "Gastrointestinal Oncology," the practice of which would include colonoscopy as a diagnostic tool. [redacted] discussed two of the petitioner's 2011 conference papers and concluded that they are "very important in shedding new light on the risks benefits and costs involved in endoscopic procedures in obese patients." It is significant that the petitioner's original submission in 2010 did not mention obese patients at all. This shift in emphasis marks a significant change from the initial filing.

The only actual gastroenterologist outside of [redacted] to provide a letter is [redacted] stated:

> I am well aware of [the petitioner's] reputation in our field as an outstanding Gastroenterologist, and certainly consider her to be at the top of the field. I am particularly impressed with her paper in [redacted] which made me aware of Fascioliasis – a rare parasite that can cause obstruction of the bile ducts and inflammation of the pancreas. Since the management of Fascioliasis is different to the usual causes of pancreatitis and biliary sepsis, it is important for gastroenterologists to be aware of this unusual presentation of the disease and keep it as a differential in patient emigrating from endemic countries who present with acute pancreatitis.

It is important to note that the petitioner did not discover the disease, create a new method to diagnose or treat it, or introduce a previously unknown or underreported ailment to the medical literature. Rather, she was one of several authors of a paper that described one case of the disease. An editorial commentary published along with the petitioner's paper discussed symptoms and diagnosis, and noted that literature discussing the *Fasciola hepatica* parasite dates back to 1379.

[redacted] works in the "Sections of Internal Medicine and Transplantation." [redacted] also discussed the fascioliasis diagnosis, and stated that the petitioner's "paper is regarded as very important in shedding new light on an important clinical issue and in so doing, has *directly led to improvements in patient care*." Like other witnesses, [redacted] failed to elaborate by, for example, identifying any specific "improvements in patient care."

The petitioner separated two of the letters from the others, under the heading "Evidence of Leading/Critical Roles." [redacted] repeated the observation that the petitioner has training in gastroenterology as well as in obstetrics and gynecology, and stated: "because of this combination of expertise she was selected to give a presentation on [redacted] to a team of experts at the [redacted]

[redacted] stated that the petitioner "currently runs a hepatology clinic once a week." Both witness letters focused on the petitioner's work after the petition's filing date, with passing mentions of earlier activities.

The petitioner documented three citations of her One of the citing articles also cited an article from 2005, reporting a case of pancreatitis caused by *F. hepatica* infestation. This earlier paper proves that the petitioner and her colleagues did not introduce the diagnosis into the medical literature. Another citing article made the same point as the commentary that accompanied the petitioner's paper: pancreatitis is a rare symptom of fascioliasis, which would seem to constrain, rather than broaden, the influence and impact of the petitioner's paper, even if others had not already reported the existence of that symptom.

The petitioner submitted additional evidence of poster presentations and electronic slide presentations, but no objective evidence to show that these materials represent significant achievements rather than routine activities expected of medical students at an advanced stage of training. Documenting their existence is not the same as documenting their significance.

In response to the director's request for first-hand evidence and information about awards, the petitioner indicated that two poster presentations at a The petitioner submitted an anonymous cover sheet, presumably written by the petitioner or by counsel, that included quotations about the two awards. The cover sheet identified no sources for the quoted passages. Therefore, the petitioner did not follow the instruction to submit "a statement from the institution that granted the award" to provide information about that award. Furthermore, both of the claimed poster awards date from after the petition's filing date. The petitioner's initial submission had documented an award from but the petitioner submitted nothing from to establish the significance of the award despite specific instructions to do so.

The director denied the petition on June 20, 2012. The director noted that the petitioner's response to the request for evidence included "additional support letters" as well as "evidence of additional poster presentations . . . and copies of abstracts." The director found that "the requested waiver appears to primarily rest on the issue of [the petitioner's] abilities as a Physician." The director concluded that the petitioner had submitted "insufficient evidence to demonstrate that [the petitioner's] proposed employment would specifically benefit the national interest of the United States to a substantially greater degree than a similarly qualified U.S. worker."

On appeal, counsel states: "The record shows that [the petitioner] has conducted important research, and we believe the officer has not taken into account the objective evidence provided which shows the field's recognition of the influence of this research." Counsel does not identify this "objective evidence." Counsel protests that the director's decision contained "no mention of the As noted previously, the awards named above date from 2011 and therefore cannot establish eligibility as of the 2010 filing date. Furthermore, the director provided very specific instructions for the petitioner to establish the significance of any awards she had received. The petitioner responded with a photograph of herself holding a partially legible award certificate.

Counsel states that the petitioner's "unique combination of expertise, coupled with her gender, cannot be properly articulated in the labor certification process. . . . [S]he is one of less than a

handful of female gastroenterologists in the country, with expertise in obstetrics and gynecology." Counsel asserts that "[t]his point was a central point to the Request for Evidence response, but was not addressed by the reviewing officer." The petitioner had indeed submitted materials to show that most gastroenterologists are male, but that many female patients prefer female gastroenterologists. The immigration of one female gastroenterologist would not significantly address this imbalance or benefit the national interest (as opposed to accommodate the personal preference of a small number of patients). The issue of a patient's "comfort level" (counsel's phrase) is a real one for a given patient, but the petitioner's ability to put her own female patients at ease does not present a benefit that is national in scope.

Likewise, the petitioner's training in obstetrics and gynecology may be unusual among gastroenterologists, but counsel has not explained how this is a national interest issue. The petitioner has not demonstrated that the scarcity of a given combination of skills is directly proportional to the national-scale benefit arising from that combination.

The unsupported assertion that a female gastroenterologist with obstetrical/gynecological training serves the national interest to a substantially greater degree than a male gastroenterologist with no such training is not a strong basis for approving the national interest waiver. Therefore, the director's failure to discuss this element of the petitioner's claim is not an adjudicative error that warrants reversal of the denial decision.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.